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In The

Supreme Court of the United States

MICHIGAN HIGH SCHOOL ATHLETIC ASSOCIATION, INC.,

Petitioner,

v.

COMMUNITIES FOR EQUITY, et al.,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF OF THE MICHIGAN HIGH SCHOOL TENNIS COACHES' ASSOCIATION AND OF RICHARD D. FRIEDMAN, AS NEXT FRIEND TO REBECCA A. FRIEDMAN, RAFAT RIZK, AS NEXT FRIEND TO MONIKA RIZK, AND AMY CHRISTMAN, AS NEXT FRIEND TO LANDRIA CHRISTMAN, AS *AMICI CURIAE* IN SUPPORT OF PETITION FOR CERTIORARI

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INTEREST OF *AMICI CURIAE*[1]

The Michigan High School Tennis Coaches' Association (MHSTeCA) is an organization of 398 high school tennis coaches throughout Michigan, dedicated to the advancement of the sport in the state. Many of its members have been active in Michigan high school tennis for several decades. The membership of MHSTeCA has a deeper knowledge of Michigan high school tennis than any other person or group of people; more than any other group, it reflects an embodiment of the Michigan high school tennis community. MHSTeCA's Board of Directors, which has 58 members distributed among the eight districts of the state, having previously voted unanimously in favor of keeping girls' tennis in the fall, has reviewed most of the contents of this brief and approved its contents and submission emphatically and without dissent. MHSTeCA believes the views stated here – showing why fall is a far better season than spring for high school tennis in Michigan – are shared nearly unanimously by Michigan high school tennis coaches. Accordingly, the order of the District Court, which would require a shift of girls' tennis in the Lower Peninsula of Michigan from the fall to the spring, would clearly be detrimental to the interests of girls who play high school tennis in the Lower Peninsula, which accounts for about 97% of the state's population.

Richard D. Friedman is the father and next friend to Rebecca A. Friedman, Rafat Rizk is the father and next friend to Monika Rizk, and Amy Christman is the mother and next friend to Landria Christman. All three girls are high school

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[1] The parties have consented to the filing of this brief. A blanket consent to *amicus* briefs has been filed with the Clerk of the Court by by Petitioner and is noted in the Court's docket. A copy of the written consent of Respondents has also been filed with the Clerk. This brief was not authored in any part by counsel for either party, and no person or entity other than *amici curiae*, members, and counsel made a monetary contribution toward the preparation or submission of this brief.

freshmen. Rebecca and Monika, both 14, attend Ann Arbor Huron High School (the Rizk family having moved to Michigan only in the summer of 2006), and Landria, 15, attends Allegan High School. Each of them tried out for her school's varsity tennis team beginning August 14, 2006, and made the team a few days later (in the same month as the decision of the panel of the Court of Appeals for the Sixth Circuit on remand from this Court). Switching girls' tennis from the fall to the spring would hurt both girls because, for the reasons explained in this brief, the fall is the far superior season for girls' high school tennis in Michigan. Moreover, in each case another factor – in addition to those generally applicable to girls playing in tennis in Michigan – would make a switch of seasons particularly harmful.

The switch would be particularly detrimental to the interests of Rebecca and Landria because it would force them to choose between their two favorite sports. Rebecca's two favorite sports, and the two sports in which she is most proficient, are tennis and softball. The softball coach at her school, who has seen her play in pre-season workouts, is confident that she will make the varsity this year. Similarly, Landria's two favorite sports, and the two sports in which she is most proficient, are tennis and soccer. Landria and her family believe that she has an excellent chance of making the varsity soccer team this season, and in any event that she is virtually certain to do so by next season. As the seasons now stand, each girl is able to play both her favorite sports. If the tennis season switches to spring, each will have to give up one sport or the other. Each would have, at best, a much reduced prospect of being able to play another varsity sport in the fall – and even if she were able to, it would not be a sport that she enjoys as much, or one in which she is as good or as experienced as in her two favorites. As further described below, the situation of Rebecca and Landria is representative of that which will face many girl tennis players in Michigan if the seasons switch; the switch would cause far more conflicts between favored sports for girls than

it would relieve.

The switch would be particularly detrimental to Monika's interests because she suffers from Raynaud's Disease, a disorder that mostly affects young females and that makes some parts of the body feel numb and abnormally cool in response to cold temperatures, resulting in pain, swelling, numbness, tingling, and throbbing of the fingers and toes. Because, as further described below, the spring is a much colder season than the fall in Michigan, the switch of seasons would severely impair Monika's ability to play high school tennis.

SUMMARY OF ARGUMENT

In an extremely cursory discussion, 178 F.Supp.2d at 836, the District Court determined – on very little evidence and without reference to considerations that guided its decision as to other sports -- that the fall is less advantageous than the spring for tennis. This was clear error: Fall is the preferable season for high school tennis in Michigan. A switch of seasons would *hurt* the interests of girls who play high school tennis. Fall is the season in which most high school girls in the nation play tennis. The weather in Michigan is far better in the fall than in the spring, and that is especially important for girls' tennis. The fall is better placed in relation to the school calendar, and opportunities to prepare are far superior for the fall season. Switching tennis to the spring would deprive Michigan girls of some excellent opportunities for interstate competition that they now have, and it would force many girls to choose between their two favorite sports.

The fact that MHSAA assigns girls' tennis to the fall and boys' tennis to the spring weighs *against*, rather than supports, the District Court's finding that the overall allocation of Michigan high school athletic seasons discriminates against girls. Moreover, even assuming that there has been such discrimination and that a reallocation of seasons is part of an

appropriate remedy, the remedy should not include a switch of girls' tennis to the spring, which would aggravate rather than mitigate the situation.

The fact that the fall is so clearly the better season for girls' tennis in Michigan – indeed, *amici* do not believe that on careful inspection this proposition is open to serious doubt – also has a broader significance for this case. The District Court fell into error with respect to girls' tennis because of a structural problem in this litigation. The interest of the respondents was to show discrimination wherever it could. Petitioner MHSAA, in responding to the litigation as in developing the schedule of seasons that became the principal subject of this litigation, had to reconcile a wide variety of interests – involving many sports and the interests of both boys and girls. *Amici* mean no criticism of either the respondents or of MHSAA in pointing this out; on the contrary, the problem is that each party served its interests as it thought best, those interests did not align with those of girls' tennis, and as a result, when this matter was tried in 2001, no one presented to the District Court the case demonstrating that the fall is clearly the better season for girls' tennis. In considering the pending Petition, the Court should recognize the variety of factors MHSAA must attempt to reconcile. Such recognition should inform the Court's assessment not only of the procedural problem in this case but also of the substantive standard of conduct governing state athletic administrative authorities like MHSAA.

ARGUMENT

I. THE FALL IS THE BETTER SEASON FOR GIRLS' HIGH SCHOOL TENNIS IN MICHIGAN.

A. The Large Majority of Girls' High School Tennis Throughout the Nation Is Played in the Fall Season, and Participation Rates Are Higher Where Tennis Is Played in the Fall than Where it Is Played in the Spring.

In justifying its decision that Michigan's choices of seasons for girls' volleyball and basketball is disadvantegous to girls, the District Court pointed to the fact that those choices are highly idiosyncratic, contrary to the format in 48 states. *See* 178 F. Supp.2d at 818 & n.6. By contrast, the District Court did not consider at all in which season most girls throughout the nation play tennis. In fact, high school girls in Michigan play tennis in the same season as most of their peers throughout the nation. Among the states in which girls' high school tennis is played in the fall are seven of the nation's eight largest by population (excluding only Florida).[2] Except for Indiana, all of the states touching the Great Lakes and all of the states bordering Michigan, or within 200 miles of Michigan, play girls' high school tennis in the fall.

In about 60% of the nation, as measured by population, girls play high school tennis in the fall. Furthermore, in fall states, though they are weighted towards the colder parts of the country, 611 girls per million total population play high school tennis, while in spring states 580 girls per million total population play. Where boys play tennis in the fall, the participation rate is 629 per million, and where they play in the spring the rate is only 520 per million.[3] Thus, *boys, like girls,*

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[2] A listing, *High School Tennis Seasons, State by State* is posted on MHSTeCA's website, www.mhsteca.org.

[3] Population data are available from United States Census Bureau, *Annual Estimates of the Population for the United States, Regions*

participate more in high school tennis when it is played in the fall than when it is played in the spring.

B. The Weather for Playing Tennis in Michigan Is Far Better in the Fall Season than in the Spring Season.

The most obvious reason why the fall is superior for tennis in Michigan is one that the District Court utterly disregarded in the present context: ***The weather is far better in the fall season than in the spring season.***

The District Court recognized that weather is critical in determining the optimal season for a given sport. 178 F. Supp.2d at 808 (citing "Michigan weather" as an "obvious" factor even to "the casual observer," and tennis as one of the sports not played outside in Michigan in the winter for this reason). And in concluding that fall is better than spring for golf, the court relied heavily on the superiority of fall weather. *Id.* at 832 (noting that "[g]irls are more likely to face cold, icy weather" in the spring than in the fall). In discussing its finding that the spring is the better season for tennis, however, the District Court ***did not mention weather at all.*** But it is clear beyond genuine dispute that (1) weather is a particularly important factor in the context of high school tennis, (2) in the case of tennis as in golf, the weather in Michigan is far better for tennis during the fall than during the spring, and (3) the differential in weather is more significant for girls than for

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and States, and for Puerto Rico: April 1, 2000 to July 1, 2006 (NST-EST2006-01), <http://www.census.gov/popest/states/NST-ann-est.html>. Participation data are available at National Federation of State High School Associations, *2005-06 High School Athletics Participation Survey*, <http://www.nfhs.org/core/contentmanager/uploads/2005_06NFHSparticipationsurvey.pdf> (hereinafter NFSHA Athletics Participation Survey). The Survey does not give participation data for tennis in Georgia; accordingly, the per capita participation numbers presented here have been calculated without reference to that state.

boys.

Tennis is highly vulnerable to bad weather – indeed, probably more than any other sport in which Michigan high school students compete. Precipitation, wind, and cold all have severely adverse impacts on the sport. With respect to each of these three factors, the fall season is clearly superior to the spring season. And, though indoor courts present a feasible alternative during the summer, they do not – except with respect to end-of-season tournaments – for most practices and competitions between September and May.

Precipitation – Tennis courts become dangerously slippery when wet. Therefore, even a light drizzle will cause at least suspension of a match. Even if the precipitation ends quickly, that does not mean the match can continue; the courts must first dry, and especially in cool weather this can take hours.

Precipitation is a significantly greater problem in the spring season than in the fall season in Michigan's populous areas. For example, in Detroit, the state's largest city, the average number of days per month with at least .01" precipitation is 12.7, 12.5, and 11.6 for March, April, and May, respectively, but only 9.5, 9.9, and 9.8 for August, September, and October, respectively.[4]

Cold – Cold weather makes for particularly miserable playing conditions for tennis, because it requires great manual dexterity on the part of all players, it is played nearly continuously, with only short breaks, *and* using gloves handicaps a player significantly. And there can be no doubt that in Michigan the spring is much colder than the fall.

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[4] The precipitation and temperature data presented here, and similar data for many other locations, are available from the *Climate of the Midwest* website of the Midwestern Regional Climate Center, <http://mcc.sws.uiuc.edu/climate_midwest/mwclimate_data_summaries.htm>. Detroit is used here for illus-trative purposes; the situation is materially similar throughout the Lower Peninsula of Michigan.

The fall season begins in summer warmth, with temperatures typically in the 80s in the Lower Peninsula.[5] More than a month – nearly half the season – passes before the weather cools to the very highest level that the spring season reaches *at its tail end.* Even at the end of the season in October, the weather is generally tolerably warm – and as discussed below, if the weather is poor then, when end-of-year tournaments are played, that is of secondary importance.

The spring season, by contrast, begins in March, in winter cold; March is a heavy-snow month. Even in early and mid-April, the temperature is generally cool, and frequently intolerably cold; snow remains a significant problem. For only 44 days of the nominal 83-day season is the average temperature (using Detroit figures) 60° or greater – as compared to 67 out of 69 days in the fall.

Cold temperatures pose significantly more of a problem for girls than for boys, because Raynaud's Disease overwhelmingly affects girls rather than boys. Girls with Raynaud's, like *amica* Monika Rizk, are especially susceptible to cold and numbness in various parts of their bodies – most significantly, with respect to tennis, in their fingers and toes – in response to cold temperatures. They suffer pain, numbness, swelling, tingling, and throbbing of the fingers and toes, and the symptoms are aggravated by stress.[6] Accordingly, their ability to play tennis is severely impaired by cold weather, and their well-being is impaired by playing tennis in the cold.

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[5] In 2006-07, the Lower Peninsula season dates are March 12 to June 2 for boys and August 14 to October 21 for girls.

[6] *See, e.g.*, National Institute of Arthritis and Musculoskeletal and Skin Diseases, *Questions and Answers About Raynaud's Phenomenon*, <http://www.niams.nih.gov/hi/topics/raynaud/ar125fs.htm>; MayoClinic.com, *Raynaud's disease*, <http://www.mayoclinic.com/health/raynauds-disease/DS00433>; K.M. Brown, et al., *The Effects of Stress, Anxiety, and Outdoor Temperature on the Frequency and Severity of Raynaud's Attacks: The Raynaud's Treatment Study*, 24 JOURNAL OF BEHAVIORAL MEDICINE 137 (2001).

Wind – Wind plays special havoc with tennis. A tennis ball, light and hollow, is hit in the air – not held or hit on the ground – throughout play. Wind can easily turn an ideal shot (one just touching a line) into a completely worthless one. Wind is an especially adverse factor for girls, because they tend to hit the ball higher and softer than boys.

The spring is much windier than the fall in Michigan. In Detroit, the average wind speeds for March, April, and May, respectively, are 12, 12 and 10 mph; for August, September, and October, respectively, they are 8, 9, and 10 mph.[7]

Indoor Courts. Over summer, when much of the fall season is played, demand for indoor tennis courts is usually very light. Thus, if the weather is bad, teams can often practice and compete indoors.

By contrast, between Labor Day and Memorial Day (a few days before the boys' state tournaments), virtually all high school tennis practices and competitions must be held outside, because almost all indoor courts are reserved on a regular basis for other uses. If practice courts are available, they are expensive, and unless practice is held at an extremely inconvenient time (such as 5 am) there are not enough courts to hold a full team practice. As for competitions, a given community virtually never has sufficient available indoor courts for a match or tournament to be held. The usual end result is simple: *If a match or tournament cannot be played outside, it cannot be played.*

The only significant exceptions are the end-of-season fall tournaments. Because of the importance and one-shot nature of these tournaments, available courts can be found. Indeed, these tournaments are played largely during the ordinary school day, increasing availability, and in cities with sufficient capacity to move inside if necessary. Moreover, after the

[7] U.S. Department of Commerce National Climatic Data Center, *Climatic Wind Data for the United States from 1930-1996, available at* http://www5.ncdc.noaa.gov/document library/pdf/wind1996.pdf.

regional tournament, which is usually completed on a Friday, the season has ended for most players, so the problem is mitigated. In short, even if the weather is bad at the very end of the fall season, the problem is not serious, because an adequate substitute is at hand.

C. The Fall Season Is Far Better Placed than the Spring Season in Relation to the School Calendar.

The fall tennis season begins approximately three weeks before school. Players can try out, practice, and compete with few other demands on their time. When the season ends in October, end-of-semester exams are still months away.

The spring season, by contrast, is played entirely during the school year. It reaches its climax near the end of the year, around the time of final exams. Indeed, the two weeks of Advance Placement exams occur in May, overlapping with regional tournaments. For seniors, the timing is particularly difficult. Their school year typically ends before Memorial Day. Thus, final exams are held during the tennis season. End-of-year school ceremonies and celebrations are often held during the season, and teams are frequently forced to choose between attending these significant culminating events and competing in the end-of-year tournaments. One would be hard pressed to select a season better designed to add stress to a teenager's life and conflict with high school's educational mission.

D. Opportunities to Prepare for the Fall Season Are Far Superior to Those for the Spring.

In justifying its conclusion that the fall is the better season for golf, the District Court relied heavily on the fact that the opportunities to prepare for the season are far better for the fall than for the spring. 178 F.Supp.2d at 832. Similar considerations apply with respect to tennis, but the District Court did not

mention them.

For nearly two months before the fall season begins, students are out of school on summer vacation. The weather is warm, they can play outside, courts are plentiful, and a wealth of instructional programs – camps and clinics – and of tournaments is available. It is relatively easy for a girl to begin the season well prepared.

The period before the spring season, like the season itself, occurs entirely during the school year, while students are occupied with their studies, and in dead of winter, precluding outside play. For many students, indoor play is prohibitively expensive. In any event, most students cannot feasibly play indoors for more than a small amount of time per week. Tournaments and instructional programs are considerably sparser than during the summer. Boys now are therefore far more likely than girls to come to tryouts poorly prepared.

E. Keeping Tennis in the Fall Season Creates Far Fewer Conflicts for Girls Wishing to Play Two Sports.

The spring is a more crowded season for girls' sports in Michigan than is the fall. Moving girls' tennis into the spring would aggravate the situation, preventing many girls from being able to play two sports.

Apart from tennis, the girls' sports now sanctioned by the MHSAA for the fall, the number of participants in each, and the total number of participants are as follows:[8]

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[8] Participation figures for these tables are taken from the NFSHA Athletics Participation Survey, *supra* note 3. The figures here are for the entire state, but the season allocations are those for the Lower Peninsula only. (The District Court's order would leave girls' tennis in the fall in the Upper Peninsula.) The difference is not material, because approximately 97% of the population of the state is in the Lower Peninsula. *See* State of Michigan, *Estimated Population of Michigan Regions and Statistical Areas: 2000-2004*,

Basketball	20,604
Cross-Country	6,976
Swimming	6,910
Total	34,490

The corresponding data for the spring season are as follows:

Golf	3,713
Lacrosse	1,515
Soccer	13,972
Softball	17,132
Track & Field	18,655
Total	54,987

Even keeping tennis, with 9,671 participants, in the fall, the spring remains substantially more crowded than the fall. *If tennis were switched to the spring, the imbalance would be much worse, whether or not the other parts of the District Court's order were implemented.* Under that order, volleyball (with 21, 919 participants) would be moved from the winter to the fall season and basketball (with 20,604 participants) would be moved from the fall to the winter. This switch would be good for some girls and bad for others, but it would not greatly alter the overall picture. Golf, with 3,713 participants, would be moved from spring into the fall; on balance that would alleviate the situation somewhat. Making those changes and leaving tennis in the fall would achieve near parity between the seasons. But moving tennis, with its nearly 10,000 participants, from the fall season to the more crowded spring season, would aggravate the already existing imbalance and plainly be an adverse development for girls.

<http://www.michigan.gov/hal/0,1607,7-160-17451_28388_28392-115498--,00.html>.

To be sure, this change would relieve a conflict for some girls. For example, if a girl's two favorite sports are tennis and cross-country, moving tennis to the spring would allow her to play both. But because the spring is already the far more crowded season, moving tennis will create far more conflicts than it will relieve. *Amica* Rebecca Friedman and Landria Christman are representative in this respect. Rebecca's two sports are tennis and softball; Landria's are tennis and soccer. If tennis remains in the fall season, each girl will be able to play both of her two sports throughout high school. If the tennis season switches to the spring, each will have to choose one sport or the other and give up a sport she loves to play and at which she excels. This is the type of loss that many girls throughout the Lower Peninsula will suffer if the seasonal imbalance is worsened by moving tennis from the less crowded season to the more crowded one.

F. The Fall Presents Better Opportunities for Girls to Compete Against Neighboring Out-of-State Schools.

The District Court put weight on the lost opportunities for interstate competition in volleyball created by the disjuncture of seasons across state borders. 178 F.Supp.2d at 826. But in the case of tennis, this factor cuts the other way: Switching girls' tennis in the Lower Peninsula to the spring would deprive girls of some excellent competitive opportunities that they now enjoy.[9]

G. Impact on College Scholarships Weighs Against, Rather than in Favor, of Switching Tennis Seasons.

Completely disregarding all the considerations discussed above, the District Court based its decision with respect to

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[9] *See, e.g.*, http://www.adrian.k12.mi.us/Schools/AHS/AHS_Page/Main.htm (listing matches between Adrian High School and Toledo-area schools).

tennis on its perception that playing high school tennis in the fall season disadvantages girls seeking college scholarships.[10] It relied primarily on the testimony of two out-of-state witnesses who claimed no familiarity with Michigan tennis. Their theory was that college coaches rely heavily in making recruiting decisions on United States Tennis Association ("USTA") tournaments held in the summer. Accordingly, the theory goes, players who have their high school seasons in the spring, shortly before those tournaments, are better prepared for them than those who play high school tennis in the fall. The theory has no merit.

First, impact on scholarship prospects is a fanciful concern for the overwhelming majority of girls who play high school tennis in Michigan. *Amicae* Rebecca Friedman, Monika Rizk, and Landria Christman are typical in this regard of high school tennis players. Each of them tried out for her school's tennis team because she loves the game; she loves to compete; she enjoys being a part of a team; and she is aware of the many benefits offered by playing an active, physically demanding sport for her high school varsity. Each is aware that among those benefits is the prospect that being actively engaged in a varsity sport, like any substantial extra-curricular activity, will likely make her a more interesting, better rounded, and generally stronger candidate for college *admissions*. But the prospect of a college *scholarship* plays no role at all in the commitment of any of these girls' commitment to the sport – or in their parents' support (in time, money, emotion, and mileage) for that commitment. At this point, these girls, who are ninth graders, do not know whether they will even want to

[10] The Court also said in passing that the spring season is about 20 days longer than the fall season. 178 F.Supp.2d at 836. In fact, in the Lower Peninsula, nominally the spring season is 14 days longer than the fall season. But because of the differential in weather, the effective, as opposed to the nominal, season is shorter in the spring than in the fall.

play tennis in college. A realistic assessment suggests that, though they are good players,[11] none of them is likely to be offered a college scholarship. Even if one of these girls is offered a scholarship, the chance that it will be at a college that she is interested in attending is very small; they will be guided principally by academics in making college choices. In short, for these three girls, as for most high school players, any impact of the assignment of seasons on the prospect of a college tennis scholarship is of no significance.

Second, Michigan girls cannot be disadvantaged by scheduling as compared to other Michigan girls, of course, or to most girls in the region or in the nation; as discussed above, the fall is when *most* girls in the nation, and in the states near Michigan, play high school tennis. *Cf.* 178 F.Supp. 2d at 820 (noting, as a factor favoring placement of girls' basketball in the winter, that it would put Michigan girls "on 'equal footing'" with most of their counterparts throughout the nation).

Third, even as compared to girls who play high school tennis in the spring, Michigan girls are not disadvantaged. The theory of the District Court appears to have been that colleges' evaluations depend completely upon the summer USTA tournaments and that playing on a high school team in the spring is the best possible preparation for those tournaments, saving a scholarship aspirant from having to choose between playing in them unprepared or preparing through private classes and lessons. But for several reasons this view utterly ignores reality.

(A) The summer USTA tournaments are far from the exclusive consideration for college recruiters. Performance in high school competition also plays a role. Though there are

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[11] Rebecca and Monika were the only freshmen playing regularly on the team that won the Division I championship for the Lower Peninsula in October 2006; Landria played second singles as a freshman on the team that placed second in the Division III championship.

more USTA tournaments in the summer, a player eager to play in such tournaments can find them all year round.[12] Rankings – a more comprehensive measure than performance in one or two tournaments – depend on cumulative performance in all those tournaments, and not in other competitions. Seedings in any given tournament also depend on rankings; thus, a player hoping to be seeded well in the summer tournaments must have played in a significant number of USTA tournaments beforehand.

(B) Given today's level of competition, nobody becomes a serious candidate for a college scholarship, and particularly an elite scholarship, merely by picking up a racket in time to play a high school season, whether spring or fall. A serious scholarship candidate must play year round, and private instruction and coaching are inevitably significant parts of the formula.[13]

(C) Playing on a high school team is not even the optimal preparation on the eve of elite tournaments. Indeed, some high-ranked players of high school age in Michigan decline to play on their high school teams because they feel doing so would distract them from more intense preparation and competition. The practice is especially prevalent among boys, whose high school season comes right before the summer tournaments. If the seasons were switched, the practice would probably become more prevalent among top-ranked girls than it is among boys, because at the upper levels, the competition in girls' high school tennis in the state is spread thin; a scholarship candidate

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[12] *See* the USTA website for finding tournaments, http://tennislink.usta.com/tournaments/Schedule/Search.aspx.

[13] To get a sense of the active, year-round tournament participation by Michigan's top-ranked players, one may examine the actual player records., which are posted on the USTA website. For example, the records for ranked 18-and-under female players in Southeastern Michigan are available at <http://tennislink.usta.com/tournaments/rankings/rankinglists.aspx?id= 295967>.

is far more likely to find a tough match in a spring USTA tournament than among her teammates or in most interscholastic competitions.

Fourth, the District Court offered only speculation, and no proof, that playing in the fall disadvantages Michigan girls seeking scholarships. *Cf.* 178 F.Supp.2d at 817 (recognizing the possibility that playing basketball in the fall, outside the collegiate season, increases ability of college coaches to see players, but noting that "the MHSAA did not offer any evidence to prove that this translated into more scholarships or spots on collegiate basketball teams than Michigan girls would otherwise receive"). That is hardly surprising. The experience of Michigan coaches, as represented by MHSTeCA, is that the proposition is simply not true.

Fifth, while acknowledging the significance of the points in other contexts, the District Court paid no attention to two factors that make the fall a *better* season for players seeking college scholarships.

(A) Because college tennis is a spring sport, coaches and other scouts have much more time in the fall to evaluate potential recruits. *Cf.* 178 F.Supp.2d at 817, 820-21 (recognizing force of this consideration in the context of basketball).

(B) The fall season, but not the spring season, is played before commitments by colleges and by students must be made. Accordingly, fall players have an extra year in which to be evaluated. *Cf.* 178 F.Supp.2d at 829, 832 (recognizing force of this factor with respect to soccer and golf).

It would be extraordinarily unfortunate if the supposed impact on scholarship prospects should cause girls' tennis to be moved from the fall, to the detriment of nearly 10,000 girls who play high school tennis in Michigan.

II. MHSAA'S NEED TO RECONCILE INTERESTS IN TRADITION SHOULD INFORM THE SUBSTANTIVE STANDARD GOVERNING ITS CONDUCT.

This is not a close call. The fall is clearly a far better season than the spring for high school tennis in Michigan. That is obvious to the entire Michigan high school tennis community.

Given this, how did the District Court fall into such clear error? The structure of the litigation helps provide an answer. The plaintiffs, Respondents in this Court, had a strong interest to demonstrate pervasive discrimination against girls in the allocation of seasons; as Petitioner suggests, Petition at 7, this suit was mainly about volleyball, but there was no warrant for a federal court order moving the volleyball season without proving a pattern of discrimination. Petitioner MHSAA, on the other hand, had a wide range of interests to reconcile, because its responsibility extends to many sports, and both to boys and girls; not surprisingly, therefore, it emphasized the complexity in allocation of seasons rather than the advantages of one season over another. *Amici* emphasize once again that they do not mean any criticism of either Petitioner or of Respondents in pointing this out; both have served their interests as they thought best. The fact is that the interests of neither align with those of girls' tennis. Thus, evidence of the sort presented in this brief was not put before the District Court, and MHSAA, when required to designate two sports for a switch of season, chose tennis as one of them – a switch that would be good on the whole for boys but very bad for girls.

The procedure leading to the District Court's order was therefore seriously flawed. Beyond that, the fact that MHSAA, and statewide athletic administrative agencies like it, have such a complex range of interests to reconcile is a factor that should inform this Court's choice of standards governing the determination of whether they have discriminated in their allocation of athletic seasons.

CONCLUSION

This Court should grant the Petition to ensure national uniformity in the standards for determining whether statewide administrative agencies have discriminated in their allocation of athletic seasons. And by reviewing this case, this Court can prevent a result that would be both ironic and highly unfortunate. The District Court's order was entered for the purpose of preventing discrimination against girls. But it will make the situation worse, not better, for female tennis players. For the indefinite future, the thousands of girls who play high school tennis every year in Michigan's Lower Peninsula will be forced to play in a season that is much less preferable than the one in which they now play. They will be forced to do so on the basis of remarkably skimpy evidence and flawed analysis, the result of a process in which the interests of girls' tennis were not adequately represented..

Some of the factual assertions made in this brief are acknowledged (in other contexts) in the opinion of the District Court. Most of the others are "not subject to reasonable dispute" under the standards of Fed. R. Evid. 201. Accordingly, *amici* believe that a reviewing court can take judicial notice that the fall is the better season for girls' high school tennis in Michigan. At the very least, this Court should require that no change in tennis seasons be made absent careful fact-finding with respect to tennis.

The fact that girls in Michigan play high school tennis in the fall provides no support for – and instead weighs *against* – the conclusion that MHSAA has discriminated against girls in the allocation of seasons. Furthermore, if it is ultimately determined that MHSAA did discriminate, the remedy should not include a provision requiring girls to play their high school tennis season in the spring. If such a provision is allowed to stand, then to the extent this litigation concerns tennis, it will have achieved precisely the opposite of the goal for which it was brought.

Respectfully submitted,

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Appendix

In this cartogram of the continental United States , the size of the representation of each state is proportional to its population. States in which girls' high school tennis is played in the fall are shaded; states in which girls' high school tennis is played in the spring are unshaded.